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No. 87-2064

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THE B.F. GOODRICH COMPANY,

Petitioner,

v.

THOMAS HAROLD LAKE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Respondent Lake believes that the Questions Presented by the Petitioner B.F. Goodrich in its Petition for a Writ of Certiorari do not accurately state the issues of this case. Lake submits that the following questions more accurately describe the issues to be considered by this Court.

I. Based on the witnesses and testimony at trial, were the District Court's findings, and the Eleventh Circuit's affirmance that Goodrich "made no real effort, certainly not a good faith effort, to find an accommodation for this employee," and that "there would have been no undue hardship to [Goodrich] to accommodate" Lake, clearly erroneous?

II. Were the District Court's ruling, and the Eleventh Circuit's affirmance that Goodrich discriminated against Lake because Goodrich "made no real effort, certainly not a good faith effort, to find an accommodation for this employee," and that "there would have been no undue hardship to [Goodrich] to accommodate" Lake, consistent with this Court's holdings in *Ansonio Bd. of Educ.* v. *Philbrook*, 479 U.S. 60, 107 S.Ct. 367 (1986), and *Trans World Airlines* v. *Hardison*, 432 U.S. 63 (1977), that an employer must offer a reasonable accommodation of an employee's religious beliefs so long as it does not incur an undue hardship?

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OPINIONS BELOW

The decision of Judge J. Foy Guin, Jr. of the United States District Court for the Northern District of Alabama, finding that Goodrich discriminated against Lake on the basis of religion, is not reported and appears in Goodrich's Appendix B at 11. The opinion of the Court of Appeals for the Eleventh Circuit, affirming the District Court, is reported at 837 F.2d 449 (11th Cir. 1988) and appears in Goodrich's Appendix B at 1. The denial by the Eleventh Circuit of Goodrich's Petition for Rehearing and Suggestion for Rehearing *en banc* is unreported and appears in Goodrich's Appendix C at 20.

STATUTES INVOLVED

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) provides:

> (a) It shall be an unlawful employment practice for an employer—
>
> (1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex or national origin.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(j) provides:

> (j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

SUMMARY OF ARGUMENT

In Title VII cases the District Court's findings on discrimination may not be reversed unless the appellate court concludes that the findings are clearly erroneous. *Anderson* v. *City of Bessemer City*, 470 U.S. 564 (1985). If the District Court's account of the evidence is plausible, then the appellate court may not reverse the decision even though the appellate court might be convinced that had it been sitting as trier of fact, it would have weighed the evidence differently. *Id.* at 574.

Most of the facts in this case pertaining to religious accommodations were controverted. These factual disputes were fully explored in a four-day trial and decided in

favor of Lake. The District Court concluded that Goodrich "made no real effort, certainly not a good faith effort, to find an accommodation for this employee" and that "there would have been no undue hardship to [Goodrich] to accommodate" Lake. Given the unique opportunity of the District Court to hear and observe the testimony and Goodrich's "don't care attitude" toward accommodating Lake, the Court of Appeals was correct in holding that these findings are not clearly erroneous.

The District Court's ruling, and the Eleventh Circuit's affirmance, are entirely consistent with this Court's decisions in *Trans World Airlines* v. *Hardison*, 432 U.S. 63 (1977), and *Ansonia Bd. of Educ.* v. *Philbrook*, 107 S.Ct. 367 (1986). *Hardison* and *Philbrook*, taken together, require that an employer offer a reasonable accommodation of an employee's religious beliefs so long as the employer does not incur an undue hardship. *Philbrook*, 107 S.Ct. at 372. The District Court's findings that Goodrich "made no real effort, certainly not a good faith effort, to find an accommodation for this employee" and that "there would have been no undue hardship for [Goodrich] to accommodate this employee" is entirely consistent with, and faithful to, both *Hardison* and *Philbrook*. The District Court also found that the cost to Goodrich of accommodating Lake would not have amounted to an undue hardship, consistent with the *de minimus* cost standard articulated in *Hardison*. Thus, Goodrich failed to comply with the requirements of *Hardison* and *Philbrook*.

Finally, this case neither creates an intercircuit conflict, nor does it present any novel question of federal or constitutional law requiring review by this Court. Thus, the Petition for a Writ of Certiorari should be denied.

STATEMENT OF THE CASE

Lake charged that Goodrich failed to provide a reasonable accommodation of his religious beliefs and fired him because of those beliefs in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

Lake was hired by Goodrich in 1976 to work at its Tuscaloosa plant as an instrument mechanic. He became a member of the collective bargaining unit. Under the collective bargaining agreement, union members worked a 40-hour workweek, Monday through Friday, and had an absolute right to refuse all overtime. In 1979 Lake was promoted to an electrical instrument foreman's position because, according to a company witness, he "exemplified what [Goodrich] was looking for in an employee, as far as motivation, getting out there, wanting to get the job done." As a foreman, however, Lake was no longer protected by the overtime provisions of the collective bargaining agreement.

In 1981 Lake and his wife decided to become members of the Seventh-day Adventist Church. The church teaches that one should not work from sundown Friday to sundown Saturday. At the time of his conversion, Lake was working on the third shift from 3:00 p.m. until 11:00 p.m. He was thus scheduled to work during part of his Sabbath.[1]

Lake had delayed joining the church until he could arrange to be off work during the Sabbath hours. When he advised Goodrich of his need for a religious accom-

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[1] There is no dispute that Lake's religious beliefs were sincere, and that he established a *prima facie* case of religious discrimination under Title VII. *Lake* v. *B.F. Goodrich Co.*, 837 F.2d 449, 450 (11th Cir. 1988).

modation, his supervisor told Lake that while he felt sorry to lose a good man, it would be difficult to move people around. Lake's schedule was not altered at that time.

In February, 1982, Lake began working a midnight shift of plant area III as a result of a job opening, enabling him to avoid working on Sabbath. The transfer was not an attempted accommodation by the company. In fact, no one from the company contended that this transfer was an attempt to accommodate Lake's religious beliefs. The trial court also received testimony from Luther Pardue, the foreman transferred from the midnight shift, who stated that the transfer was not an attempt by the company to accommodate Lake's religious beliefs, but merely the result of Pardue's own request to work the day shift.

On at least two other occasions Lake specifically informed Goodrich of his Sabbath beliefs and a need for an accommodation. At no time did anyone in the company indicate that there would be a problem respecting Lake's work schedule.

In March of 1983, Goodrich commenced production weekends; requiring an intermittent seven day work-week. The resulting seven-day workweek conflicted with Lake's Sabbath beliefs. He promptly informed Nelson, his supervisor, that he could not work during his Sabbath hours. Lake suggested he would be willing to trade with other employees in exchange of Sunday work for Saturday work. Management's reply was "It's your problem. You handle it." On July 19, 1983, Mr. Duncan, the manager of maintenance, told Lake that the company would not ask employees to cover for Lake on his Sabbaths and that it was Lake's responsibility either to be on the job or to provide suitable coverage. It was Lake's understanding

that the company was willing to do nothing at all to accommodate him.

Lake was able to arrange only partial coverage for his shift on Saturday, July 23. He tried repeatedly, yet unsuccessfully, to notify his supervisor of this fact by phone. Later, on the 23rd, Goodrich indefinitely suspended Lake because he did not work on the Sabbath. The record did not show that there had been any specific problem or costs to the company directly attributable to Lake's absence from work on July 23. There were only five production Saturdays up to the time of Lake's termination.

Testimony before the District Court by Mr. Tucker, Goodrich's personnel director, revealed that Tucker asked Lake on July 26: "Are you going to work this next Saturday during the seven-day workweek?" Lake's religious convictions required him to answer: "No, sir, I will not." Mr. Tucker replied: "In that case, you leave us no alternative but to terminate you." Lake was fired on July 26, 1983.

At no time did Goodrich seriously consider any accommodation for Lake. Many alternatives existed, however. For example, use by Lake of vacation time on his Sabbaths was never suggested by Goodrich, even though normal company policy allowed other foremen in the same craft to cover for an employee who was on vacation. It was not unusual for only one foreman to work in a section of the plant during a particular shift while the other foreman was on vacation. For example, when another foreman, Mr. Rawlins, suffered a back injury, Lake singlehandedly covered his shift for two or three weeks. No similar accommodation was ever offered to Lake.

Another option which Goodrich never attempted nor explored was returning Lake to his position as an hourly

employee, which Lake would have been willing to accept. Company witnesses testified that there was an unwritten "understanding" between Goodrich and the union that no personnel from management would revert to the bargaining unit except as a result of reduction in force.

Any difficulty in returning Lake to an hourly employee's position, however, did not stem from the provisions of any collective bargaining agreement. No witness from the union was even called by Goodrich to testify as to such an understanding, and Goodrich admitted at the trial that that it never even contacted the union about Lake returning to the bargaining unit. The trial court found that "the evidence also shows that the union has been very flexible and reasonable in granting waivers of such contract provisions." Although the contract itself provided that a bargaining unit man can act as a foreman for no more than 90 days without being made permanent as part of management, Goodrich had arranged with the union to waive the 90-day requirement with regard to at least two other employees when it served the company's interest. The District Court found that "at least one of the witnesses obtained five waivers of this rule so that he worked a year and a half as a temporary foreman!" However, Goodrich never made any effort to obtain any waiver from the union of the so-called unwritten "understanding" as to a foreman's return to the bargaining unit as a means of accommodating Lake's religious needs.

In this case, it was not a situation where a seniority-based shift bidding system would have been cirumvented by Lake's return to the bargaining unit. All members of the bargaining unit had the right to refuse Saturday and Sunday overtime. Lake's doing so would in no way affect any other employee's schedule. The only possible argument that might have been made on this point is that the

most junior employee could have been bumped out of a job if Lake were returned to the bargaining unit. However, the record shows that Lake was terminated at a time when the plant's work force was expanding. There is absolutely no evidence in the record to show that any other employee would be adversely affected in any way by Lake's return to the bargaining unit.

Unlike management here, in *Hardison* Trans World immediately involved the union in the process of attempting an accommodation and even sought a waiver of the seniority provision which was an obstacle to accommodation. *Hardison*, 432 U.S. at 77-78. In this case, no waiver of a seniority provision was necessary. At most, only a waiver of the extra-contractual understanding regarding the return of foremen to the bargaining unit would have been necessary from the union.

No one from Goodrich indicated that the company sought to find other employees with substantially similar qualifications to those possessed by Lake so as to cover for Lake on those few sporadic occasions when he was scheduled to work during his Sabbath hours. In fact, when John Allen, plant manager of Goodrich's Tuscaloosa plant, was questioned at the trial about whether there was any reason why he would oppose having a survey of other foremen as to possible alternative coverage for Lake's Sabbath, Allen testified that he did not object to the maintenance manager's statement that Goodrich was not going to assist in coverage for Lake since "that's his discretion as a manager." Rather than search for a replacement, Goodrich attempted to limit the pool of replacements for Lake to two employees. The record, however, demonstrates other employees were qualified to cover for Lake.

Testimony by Goodrich witnesses also proved that Goodrich had never spoken with the production superintendent about the possibility of Lake being transferred to the production department as a production foreman. The record indicates that management was aware of various vacancies but no lateral transfers were ever considered. The plant manager testified that he did not think it necessary to do anything other than attempt to find a shift or area position for Lake as an engineering foreman.

The plant manager admitted that on numerous occasions Goodrich operated its plant with only one foreman in area III, the area of the plant in which Lake was one of two shift foremen. He also testified that the utilization of a single engineering foreman on the first shift in area III did not in any way jeopardize the safety of the employees at the plant.

Mr. Allen, succinctly stated the company's unwillingness to offer Lake any accommodation when he testified that "it's an employee's obligation to come to work his scheduled hours" and that any responsibility for working out an arrangement to cover an employee's religious needs rested with the employee rather than with management. Mr. Duncan confirmed Goodrich's policy by telling Lake, "It's your problem. You handle it."

Based on four days of testimony, the District Court found that Goodrich had a "don't care attitude" toward accommodating Lake. It held that Goodrich discriminated against Lake because of his religion in violation of 42 U.S.C. § 2000e, *et seq*. On appeal a two-member majority of the Court of Appeals for the Eleventh Circuit was persuaded that the District Court's decision was correct. That decision, in turn, was reviewed by all members of the Eleventh Circuit, who decided not to rehear the decision.

REASONS FOR DENYING THE WRIT AND ARGUMENT

According to Supreme Court Rule 17.1, this Court grants *certiorari* when one of the following "special and important" reasons exist in a case presented to the Court:

1. When a federal court of appeals has decided a federal question in a way in conflict with applicable decisions of this Court, or

2. When a conflict between the Circuits is created by a decision of a federal court of appeals, or

3. When a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by the Court.

Clearly this case does not warrant review on any of these grounds. The District Court's findings are not clearly erroneous, but rather are based on a highly plausible view of the evidence. The decision and the Eleventh Circuit's affirmance are consistent with both this Court's prior holdings in *Hardison* and *Philbrook*, and the plain meaning of 42 U.S.C. § 2000e, *et seq*. This case poses no important question of federal law which has not already been settled by this Court, nor does it create any conflict between the Circuits. Finally, the decision below turns upon its own distinct set of facts and thus will not affect others than the litigants.

In Title VII cases a District Court's findings on discrimination may not be reversed unless the reviewing court concludes that the findings are clearly erroneous. *Anderson*, 470 U.S. 564 (1985), *Pullman-Standard* v. *Swint*, 456 U.S. 273 (1982). Specifically, the District Court's findings regarding the efforts of Goodrich at accommodation and claimed undue hardship, if any, can only be overturned if they are clearly erroneous. *Wisner* v. *Truck Central*, 784 F.2d 1571 (11th Cir. 1986).

Thus, the District Court's findings that Goodrich "made no real effort, certainly not a good faith effort, to accommodate this employee," and that "there would have been no undue hardship to [Goodrich] to accommodate" Lake cannot be reversed as clearly erroneous unless this Court is left with "the definite and firm conviction that a mistake has been committed." *Anderson*, 470 U.S. at 573. If the District Court's account of the evidence is plausible, this Court may not reverse even though it would have weighed the evidence differently. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous. *Anderson*, 470 U.S. at 574.

Lake argued—and the Court of Appeals agreed—that the District Court's decision was not clearly erroneous because it was based upon a highly plausible view of the evidence: that Goodrich discriminated against Lake in violation of Title VII because it refused to offer any reasonable accommodation of Lake's religious beliefs. Not only did the District Court decide in favor of Lake, but a two-member majority of the Court of Appeals for the Eleventh Circuit was also persuaded that this view of the evidence was not clearly erroneous. The matter also received an *en banc* review by all members of the Eleventh Ciruit, who decided not to rehear the case.

Reading Judge Hill's dissenting opinion (relied upon by Goodrich in its Petition at pages 5-6), one could be easily misled into concluding that the accommodations reviewed there were actually offered by Goodrich. In fact, the existence of each of the imagined accommodations of the dissent was denied by Lake and was the subject of conflicting testimony. The District Court, reviewing this evidence first hand, ultimately resolved these evidential disputes in Lake's favor.

Illustrative of this misconception, Judge Hill suggested that Goodrich arrange a transfer to the first shift to accommodate Lake's beliefs. However, testimony from Luther Pardue received at the trial indicates that religous accommodation had noting to do whatsoever with this transfer. Rather, the transfer occurred after Pardue, a foreman who had been working the first shift, requested to transfer to the day shift. The vacancy happened coincidentally and had nothing to do with the company attempting an actual accommodation. Goodrich can hardly cite this action as evidence of accommodation, when in fact the transfer was completely unconnected to Lake's situation.

Goodrich's Petition also pointed to Hill's dissent for the proposition that Goodrich exempted Lake from work on at least 49 Saturday maintenance days during 1982 and 1983. The trial record, however, shows that Goodrich did nothing at all in this regard, since on Lake's shift (the first shift) the foremen *never* worked maintenance Saturdays because they were required to work start-up every Sunday instead. The dissent's suggestion that Goodrich scheduled other foremen to work twelve-hour shifts and paid them premium wages to cover for Lake on Fridays and Saturdays is also misleading. In fact, as the record demonstrates no such premium wages were paid, since *both* Lake and any foreman whom Lake arranged to cover for him were paid the same overtime rate to work on Saturday. The difference in each foreman's overtime rate was *de minimus*, as the evidence clearly showed.

Other purported accommodations cited by Goodrich from Judge Hill's dissenting opinion, included:

> * Advising [Lake] that it was willing to consider any reasonable alternatives he could propose;
>
> * Allowing [Lake] to obtain replacements for himself to cover portions of his shift;

* Holding several meetings among managers and supervisors to discuss potential methods of accommodation.

In response before the District Court, Lake contended that, even if Goodrich advised him that it was willing to consider any reasonable alternatives he proposed, such a position was rendered meaningless because Goodrich (1) shifted the entire burden of solving this problem onto his shoulders and (2) always rejected any accommodation which Lake did propose. Allowing Lake to obtain replacements for himself meant nothing when, at the same time, Goodrich informed Lake that the company would do nothing further, took no active role, and advised Lake that he bore sole responsibility for working out a solution. Finally, the trial record shows that the meetings which Goodrich cites as evidence of its efforts at finding "potential methods of accommodation" were merely meetings where Lake was told by his supervisors that accommodation was "[his] problem." As the record shows, the final meeting held between Lake and his supervisors was actually the meeting at which Lake was fired. These actions hardly constitute reasonable accommodation under existing law.

Each of the other so called accommodations appearing in the dissent either never occurred or were similarly contested by Lake in the four-day trial before Judge Guin. The trial court having heard all of the evidence resolved these factual disputes in favor of Lake. Goodrich's reliance on Hill's dissent seeks to retry these factual issues *de novo*, directly contrary to this Court's holding in *Anderson*. The District Court's view of the evidence cannot be clearly erroneous because its findings are surely a permissible and highly plausible view of the evidence.

This Court, in applying the clearly erroneous standard, must also give "due regard . . . to the opportunity of the

trial court to judge the credibility of the witnesses," especially when findings are based on determinations regarding the credibility of witnesses. *See* Rule 52(a) of the Federal Rules of Civil Procedure; *Anderson*, 470 U.S. at 573.

The District Court was in the best position to observe the Goodrich management testimony at the trial, which testimony at times directly conflicted with other testimony itself. Surely the facts as they unfolded, and Goodrich's "don't care" demeanor both contributed to the District Court's conclusion that Goodrich "made no real effort, certainly not a good faith effort, to accommodate Lake" and that "there would have been no undue hardship for [Goodrich] to accommodate this employee." Given the opportunity of the District Court to judge the credibility of the many witnesses in this case, its ruling is a highly plausible view of the evidence. The Eleventh Circuit was also correct in holding that the decision was not clearly erroneous. Even if the Supreme Court might weigh the evidence differently, the District Court's decision was not clearly erroneous.

The District Court's ruling, and the Eleventh Circuit's affirmance, are also consistent with this Court's prior holdings in *Hardison* and *Philbrook*. *Philbrook* requires that an employer offer an employee a reasonable accommodation of the employee's religious belief. The District Court's ruling that Goodrich "made no real effort" to accommodate Lake necessarily leads to the conclusion that Goodrich failed to meet its burden under *Philbrook* that it offer a reasonable accommodation to the employee. To the contrary, Goodrich did nothing to accommodate Lake. *Philbrook* also advocates "bilateral cooperation" between an employer and employee in the search for an accommodation of an employee's religious beliefs. *Phi-*

lbrook, 107 S.Ct. at 372. However, as both the District Court and the Eleventh Circuit correctly recognized, the only party willing to cooperate in the search for an accommodation was Lake. Lake was even willing to take an *unpaid* leave of absence in order to give himself and Goodrich time to develop an accommodation. Yet Goodrich, with a payroll in excess of $44 million at its Tuscaloosa plant in 1983, "made no real effort to accommodate" Lake. Rather than cooperate in the search for an accommodation with Lake, Goodrich fired him.

The District Court's ruling, and the Eleventh Circuit's affirmance, that "there would have been no undue hardship to [Goodrich] to accommodate" Lake, are also consistent with *Hardison*. *Hardison* holds that an employer is not required to bear an undue hardship in attempting to accommodate an employee's religious beliefs. The District Court made specific findings about the added cost to Goodrich of an accommodation of Lake, finding that those costs were so insubstantial as to constitute "no burden on the company," consistent with the *de minimus* cost standard in *Hardison*.[2] (See Goodrich's Appendix B at 18)

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[2] The District Court correctly realized that Lake did not request that Goodrich override the seniority provisions of its labor contract, consistent with *Hardison*. This case *does not* involve seniority provisions at all, but rather calls into question why Goodrich sought waivers of the collective bargaining agreement for at least two employees who wished to remain temporary foremen covered by the agreement, but did not seek a waiver for Lake. The inconsistency of Goodrich's efforts to seek waivers from the union may constitute a further act of discrimination against Lake. A benefit "'that is part and parcel of the employment relationship may not be doled out in a discriminatory fashion, even if the employer would be free . . . not to provide the benefit at all.'" "Such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness." *Philbrook*, 107 S.Ct. at 373, quoting *Hishon* v. *King & Spalding*, 467 U.S. 69 (1984).

Thus, the District Court's opinion, and the Eleventh Circuit's affirmance are consistent with both *Philbrook* and *Hardison*. Nor does the decision conflict with any other Supreme Court ruling.

Also, no intercircuit conflict exists which would warrant granting certiorari. None of the four cases relied upon by Goodrich at page 11 of its Petition conflicts with the decision in this case. For example, *EEOC* v. *Ithaca Industries, Inc.*, ___ F.2d ___, 46 FEP Cases 1730 (4th Cir. 1988), has been reversed on rehearing *en banc* subsequent to the filing of Goodrich's brief. In reversing *Ithaca*, the Fourth Circuit has held exactly what both lower courts in the case at bar have required: that an employer who makes no specific effort to accommodate an employee's religious beliefs violates both *Hardison* and the plain meaning of 42 U.S.C. § 2000e, *et seq. Ithaca*, 46 FEP Cases 1730, at 1731 (1988).

The other three cases cited by Goodrich as in conflict are factually different or otherwise not germane to this case. Here, unlike *Turpen* v. *Missouri-Kansas-Texas R.R.*, 736 F.2d 1022 (5th Cir. 1984), Lake is not asking Goodrich to override a seniority provision of any labor agreement. Lake sought an accommodation. He asked Goodrich, among other things, to do what it did for at least two other employees on numerous occasions: seek a waiver from the union. Nor do *Brener* v. *Diagnostic Center Hospital*, 671 F.2d 141 (5th Cir. 1982), or *United States* v. *City of Albuquerque*, 545 F.2d 110 (10th Cir. 1976), conflict with the Eleventh Circuit's decision. In both *Brener* and *City of Albuquerque*, the employer did make a reasonable effort to accommodate the employee's religious beliefs, such as offering a flexible shift scheduling system, actively encouraging and assisting in the trading of schedules between employees, *see Brener*, 671

F.2d at 145, and allowing employees to take vacation leave on their religious days, or allowing employees to take unpaid leave *See City of Albuquerque*, 545 F.2d at 113. None of these options was tried by Goodrich. To the contrary, the District Court found that Goodrich made no real effort to accommodate Lake.

Thus, these four cases have no bearing on the instant matter. Nor are they even applicable to the issues in *Lake*.

Neither does this case present any novel question of constitutional law on which to grant certiorari. Both *Philbrook* and *Hardison* provide informative guidance on resolving the fact-specific issues that arise under 42 U.S.C. § 2000e, *et seq*. An employer must offer an employee a reasonable accommodation or prove that any such accommodation causes the employer an undue hardship. The decisions below are consistent with *Philbrook* and *Hardison*. The Eleventh Circuit opinion confirms a fact-specific decision of the trial court. Thus, there are no novel questions of constitutional law to be resolved.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari must be DENIED.

Respectfully submitted,

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